

SENATE, No. 2123

STATE OF NEW JERSEY

INTRODUCED JUNE 5, 1997

By Senators CONNORS and BASSANO

1 AN ACT concerning driving under the influence and amending  
2 R.S.39:4-50.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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7 1. R.S.39:4-50 is amended to read as follows:

8 39:4-50. (a) A person who operates a motor vehicle while under  
9 the influence of intoxicating liquor, narcotic, hallucinogenic or  
10 habit-producing drug, or operates a motor vehicle with a blood alcohol  
11 concentration of 0.10% or more by weight of alcohol in the  
12 defendant's blood or permits another person who is under the influence  
13 of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug  
14 to operate a motor vehicle owned by him or in his custody or control  
15 or permits another to operate a motor vehicle with a blood alcohol  
16 concentration of 0.10% or more by weight of alcohol in the  
17 defendant's blood, shall be subject:

18 (1) For the first offense, to a fine of not less than \$250.00 nor  
19 more than \$400.00 and a period of detainment of not less than 12  
20 hours nor more than 48 hours spent during two consecutive days of  
21 not less than six hours each day and served as prescribed by the  
22 program requirements of the Intoxicated Driver Resource Centers  
23 established under subsection (f) of this section and, in the discretion  
24 of the court, a term of imprisonment of not more than 30 days and  
25 shall forthwith forfeit his right to operate a motor vehicle over the  
26 highways of this State for a period of not less than six months nor  
27 more than one year.

28 (2) For a second violation, a person shall be subject to a fine of not  
29 less than \$500.00 nor more than \$1,000.00, and shall be ordered by  
30 the court to perform community service for a period of 30 days, which  
31 shall be of such form and on such terms as the court shall deem  
32 appropriate under the circumstances, and shall be sentenced to  
33 imprisonment for a term of not less than 48 consecutive hours, which  
34 shall not be suspended or served on probation, nor more than 90 days,

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 and shall forfeit his right to operate a motor vehicle over the highways  
2 of this State for a period of two years upon conviction, and, after the  
3 expiration of said period, he may make application to the Director of  
4 the Division of Motor Vehicles for a license to operate a motor  
5 vehicle, which application may be granted at the discretion of the  
6 director, consistent with subsection (b) of this section.

7 (3) For a third or subsequent violation, a person shall be subject to  
8 a fine of \$1,000.00, and shall be sentenced to imprisonment for a term  
9 of not less than 180 days, except that the court may lower such term  
10 for each day, not exceeding 90 days, served performing community  
11 service in such form and on such terms as the court shall deem  
12 appropriate under the circumstances and shall thereafter permanently  
13 forfeit his right to operate a motor vehicle over the highways of this  
14 State [for 10 years].

15 Whenever an operator of a motor vehicle has been involved in an  
16 accident resulting in death, bodily injury or property damage, a police  
17 officer shall consider that fact along with all other facts and  
18 circumstances in determining whether there are reasonable grounds to  
19 believe that person was operating a motor vehicle in violation of this  
20 section.

21 If the driving privilege of any person is under revocation or  
22 suspension for a violation of any provision of this Title or Title 2C of  
23 the New Jersey Statutes at the time of any conviction for a violation  
24 of this section, the revocation or suspension period imposed shall  
25 commence as of the date of termination of the existing revocation or  
26 suspension period. In the case of any person who at the time of the  
27 imposition of sentence is less than 17 years of age, the forfeiture,  
28 suspension or revocation of the driving privilege imposed by the court  
29 under this section shall commence immediately, run through the  
30 offender's seventeenth birthday and continue from that date for the  
31 period set by the court pursuant to paragraphs (1) through (3) of this  
32 subsection. A court that imposes a term of imprisonment under this  
33 section may sentence the person so convicted to the county jail, to the  
34 workhouse of the county wherein the offense was committed, to an  
35 inpatient rehabilitation program or to an Intoxicated Driver Resource  
36 Center or other facility approved by the chief of the Intoxicated  
37 Driving Program Unit in the Department of Health; provided that for  
38 a third or subsequent offense a person shall not serve a term of  
39 imprisonment at an Intoxicated Driver Resource Center as provided in  
40 subsection (f).

41 A person who has been convicted of a previous violation of this  
42 section need not be charged as a second or subsequent offender in the  
43 complaint made against him in order to render him liable to the  
44 punishment imposed by this section on a second or subsequent  
45 offender, but if the second offense occurs more than 10 years after the  
46 first offense, the court shall treat the second conviction as a first

1 offense for sentencing purposes and if a third offense occurs more than  
2 10 years after the second offense, the court shall treat the third  
3 conviction as a second offense for sentencing purposes.

4 (b) A person convicted under this section must satisfy the  
5 screening, evaluation, referral, program and fee requirements of the  
6 Division of Alcoholism and Drug Abuse Intoxicated Driving Program  
7 Unit, and of the Intoxicated Driver Resource Centers and a program  
8 of alcohol education and highway safety, as prescribed by the Director  
9 of the Division of Motor Vehicles. The sentencing court shall inform  
10 the person convicted that failure to satisfy such requirements shall  
11 result in a mandatory two-day term of imprisonment in a county jail  
12 and a driver license revocation or suspension and continuation of  
13 revocation or suspension until such requirements are satisfied, unless  
14 stayed by court order in accordance with Rule 7:8-2 of the Rules  
15 Governing the Courts of the State of New Jersey, or R.S.39:5-22.  
16 Upon sentencing, the court shall forward to the Bureau of Alcohol  
17 Countermeasures within the Intoxicated Driving Program Unit a copy  
18 of a person's conviction record. A fee of \$100.00 shall be payable to  
19 the Alcohol Education, Rehabilitation and Enforcement Fund  
20 established pursuant to section 3 of P.L.1983, c.531 (C.26:2B-32) to  
21 support the Intoxicated Driving Programs Unit.

22 (c) Upon conviction of a violation of this section, the court shall  
23 collect forthwith the New Jersey driver's license or licenses of the  
24 person so convicted and forward such license or licenses to the  
25 Director of the Division of Motor Vehicles. The court shall inform the  
26 person convicted that if he is convicted of personally operating a  
27 motor vehicle during the period of license suspension imposed  
28 pursuant to subsection (a) of this section, he shall, upon conviction, be  
29 subject to the penalties established in R.S.39:3-40. The person  
30 convicted shall be informed orally and in writing. A person shall be  
31 required to acknowledge receipt of that written notice in writing.  
32 Failure to receive a written notice or failure to acknowledge in writing  
33 the receipt of a written notice shall not be a defense to a subsequent  
34 charge of a violation of R.S.39:3-40. In the event that a person  
35 convicted under this section is the holder of any out-of-State driver's  
36 license, the court shall not collect the license but shall notify forthwith  
37 the director, who shall, in turn, notify appropriate officials in the  
38 licensing jurisdiction. The court shall, however, revoke the  
39 nonresident's driving privilege to operate a motor vehicle in this State,  
40 in accordance with this section. Upon conviction of a violation of this  
41 section, the court shall notify the person convicted, orally and in  
42 writing, of the penalties for a second, third or subsequent violation of  
43 this section. A person shall be required to acknowledge receipt of that  
44 written notice in writing. Failure to receive a written notice or failure  
45 to acknowledge in writing the receipt of a written notice shall not be  
46 a defense to a subsequent charge of a violation of this section.

1 (d) The Director of the Division of Motor Vehicles shall  
2 promulgate rules and regulations pursuant to the "Administrative  
3 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in order to  
4 establish a program of alcohol education and highway safety, as  
5 prescribed by this act.

6 (e) Any person accused of a violation of this section who is liable  
7 to punishment imposed by this section as a second or subsequent  
8 offender shall be entitled to the same rights of discovery as allowed  
9 defendants pursuant to the Rules Governing Criminal Practice, as set  
10 forth in the Rules Governing the Courts of the State of New Jersey.

11 (f) The counties, in cooperation with the Division of Alcoholism  
12 and Drug Abuse and the Division of Motor Vehicles, but subject to the  
13 approval of the Division of Alcoholism and Drug Abuse, shall  
14 designate and establish on a county or regional basis Intoxicated  
15 Driver Resource Centers. These centers shall have the capability of  
16 serving as community treatment referral centers and as court monitors  
17 of a person's compliance with the ordered treatment, service  
18 alternative or community service. All centers established pursuant to  
19 this subsection shall be administered by a certified alcoholism  
20 counselor or other professional with a minimum of five years'  
21 experience in the treatment of alcoholism. All centers shall be required  
22 to develop individualized treatment plans for all persons attending the  
23 centers; provided that the duration of any ordered treatment or referral  
24 shall not exceed one year. It shall be the center's responsibility to  
25 establish networks with the community alcohol education, treatment  
26 and rehabilitation resources and to receive monthly reports from the  
27 referral agencies regarding a person's participation and compliance  
28 with the program. Nothing in this subsection shall bar these centers  
29 from developing their own education and treatment programs;  
30 provided that they are approved by the Division of Alcoholism and  
31 Drug Abuse.

32 Upon a person's failure to report to the initial screening or any  
33 subsequent ordered referral, the Intoxicated Driver Resource Center  
34 shall promptly notify the sentencing court of the person's failure to  
35 comply.

36 Required detention periods at the Intoxicated Driver Resource  
37 Centers shall be determined according to the individual treatment  
38 classification assigned by the Bureau of Alcohol Countermeasures.  
39 Upon attendance at an Intoxicated Driver Resource Center, a person  
40 shall be required to pay a per diem fee of \$75.00 for the first offender  
41 program or a per diem fee of \$100.00 for the second offender  
42 program, as appropriate. Any increases in the per diem fees after the  
43 first full year shall be determined pursuant to rules and regulations  
44 adopted by the Commissioner of Health in consultation with the  
45 Governor's Council on Alcoholism and Drug Abuse pursuant to the

1 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
2 seq.).

3 The centers shall conduct a program of alcohol education and  
4 highway safety, as prescribed by the Director of the Division of Motor  
5 Vehicles.

6 The Commissioner of Health shall adopt rules and regulations  
7 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
8 (C.52:14B-1 et seq.), in order to effectuate the purposes of this  
9 subsection.

10 (cf: P.L.1995, c.243, s.1)

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12 2. This act shall take effect immediately, and shall be applicable to  
13 offenses committed on or after the effective date.

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#### STATEMENT

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18 Under the provisions of this bill, a person who is convicted of a  
19 third offense of driving under the influence would permanently forfeit  
20 his driver's license. The bill is modeled on pending federal legislation,  
21 the "Deadly Driver Reduction and Matthew P. Hammell Memorial  
22 Act," which would require states to adopt mandatory minimum  
23 sentences for drunk drivers.

24 The Hammell Act also would require a six month driver's license  
25 suspension for first offenders and a one year suspension for a second  
26 conviction. However, New Jersey's driving under the influence statute  
27 currently meets these requirements by imposing a minimum driver's  
28 license suspension of six months to one year on first offenders and a  
29 two year suspension on second offenders.

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34 Requires permanent driver's license suspension for third drunk driving  
35 offense.